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14 **UNITED STATES DISTRICT COURT**
15 **DISTRICT OF NEVADA**

16 NATIONAL UNION FIRE INSURANCE)
17 COMPANY OF PITTSBURGH, PA, a)
18 Pennsylvania corporation,)
19)
20 Plaintiff,)
21)
22 v.)
23 SHARP PLUMBING, INC., a Nevada)
24 corporation and DOES 1 through 50, inclusive,)
25)
26 Defendants.)
27)
28)

Case No. 2:09-cv-00783-GMN-GWF

**NATIONAL FIRE & MARINE
INSURANCE COMPANY'S MOTION
TO CLARIFY JUDGMENT
PURSUANT TO FEDERAL RULE OF
CIVIL PROCEDURE 60(a) BY
EXPRESSLY REFERENCING ORDER
OF REIMBURSEMENT**

AND ORDER

1 SHARP PLUMBING, INC., a Nevada
2 corporation,

3 Counter-Claimant,

4 v.

5 NATIONAL UNION FIRE INSURANCE
6 COMPANY OF PITTSBURGH, PA, a
7 Pennsylvania corporation; DOES 1 through 100,
inclusive,

8 Counter-Defendants,

9 SHARP PLUMBING, INC., a Nevada
10 corporation,

11 Third-Party Plaintiff,

12 v.

13 NATIONAL FIRE & MARINE INSURANCE
14 COMPANY, a Nebraska corporation; DOES 1
through 100, inclusive,

15 Third-Party Defendants.

16
17 NATIONAL FIRE & MARINE INSURANCE
COMPANY, a Nebraska corporation,

18 Counter-Claimant,

19 v.
20

21 SHARP PLUMBING, INC., a Nevada
22 corporation,

23 Counter-Defendant.
24
25
26
27
28

**NATIONAL FIRE & MARINE INSURANCE COMPANY’S MOTION TO CLARIFY
JUDGMENT PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 60(a)
BY EXPRESSLY REFERENCING ORDER OF REIMBURSEMENT**

National Fire & Marine Insurance Company (“National Fire”), by and through its undersigned counsel, respectfully moves this Court pursuant to Federal Rule of Civil Procedure 60(a) to clarify the Court’s December 30, 2013 judgment (ECF No. 226) (the “Judgment”) by expressly setting forth the award of reimbursement granted by the Court in its December 27, 2013 Order (ECF No. 225) (the “Order”).

National Fire bases this motion upon the accompanying Memorandum of Points and Authorities and the following facts:

1. The Order states that “Motion for Summary Judgment (ECF No. 183) is **GRANTED.**” (Order at 24:3–4.)
2. That Motion expressly requested reimbursement in the amount of \$1,266,682.80. (ECF No. 183 at 3:3–6, 27:1–2.)
3. The Order expressly held that “summary judgment is appropriate as to . . . National Fire’s cause of action for reimbursement . . .” (Order at 18:4–5.)
4. The Order further held that “National Fire is entitled to an order declaring that it has no duty to indemnify Sharp or to pay the Sharp Settlement, and that *Sharp must reimburse National Fire.*” (Order at 15:1–3 (emphasis added).)

National Fire submits herewith a Proposed Amended Judgment.

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1 Dated: January 6, 2014

Respectfully submitted,

2 BAILEY ♦ KENNEDY

3
4 By: /s/ Sarah E. Harmon
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14 ***Attorneys for Third-Party Defendant and***
15 ***Counterclaimant National Fire & Marine***
16 ***Insurance Company***

MEMORANDUM OF POINTS AND AUTHORITIES

On December 27, 2013, the Court entered an order on three motions for summary judgment (the “Order”). (ECF No. 225.) The Order was reduced to judgment in the “Judgment in a Civil Case” entered on December 30, 2013 (the “Judgment”). (ECF No. 226) The Judgment correctly reflected that the Court had granted summary judgment in National Fire’s favor, including on National Fire’s “First Motion for Summary Judgment (as to National Fire’s Counterclaims)” (ECF No. 183). That summary judgment motion expressly requested reimbursement in the amount of \$1,266,682.80, and the Order held that National Fire was entitled to summary judgment on its claim for reimbursement. However, because the Judgment does not explicitly state that Sharp Plumbing must so reimburse National Fire, National Fire respectfully requests that the Court revise the Judgment accordingly pursuant to Federal Rule of Procedure 60(a).

RELEVANT PROCEDURAL HISTORY

On January 1, 2013, National Fire and Sharp Plumbing filed cross-motions for summary judgment. Specifically:

1. National Fire filed a First Motion for Summary Judgment (as to National Fire’s Counterclaims) (ECF No. 183) (the “First Motion”). The First Motion sought summary judgment on both of National Fire’s counterclaims, including National Fire’s counterclaim for “Reimbursement.” The First Motion requested reimbursement in the amount of \$1,266,682.80. (ECF No. 183 at 3:3–6, 27:1–2.)
2. National Fire filed a Second Motion for Summary Judgment (as to Sharp Plumbing Inc.’s Amended Third-Party Complaint) (ECF No. 184) (the “Second Motion”).
3. Sharp Plumbing filed a Motion for Summary Judgment (ECF No. 188) (“Sharp’s Motion”).

On December 27, 2013, the Court entered the Order. The Order granted the First Motion in its entirety, granted the Second Motion in part, and denied Sharp’s Motion. (Order at 24:3–8.) The Order expressly held that “summary judgment is appropriate as to . . . National Fire’s cause of action for reimbursement” (Order at 18:4–5.) The Order further held that “National Fire is

1 entitled to an order declaring that it has no duty to indemnify Sharp or to pay the Sharp Settlement,
2 and that ***Sharp must reimburse National Fire.***” (Order at 15:1–3 (emphasis added).) In its
3 conclusion, the Order stated that “[t]he Clerk shall enter judgment accordingly, and this case shall
4 be closed.” (Order at 24:9.)

5 The Judgment entered by the Clerk reflected the fact that the Court had rendered a decision
6 and stated that “judgment is hereby entered in favor of Third-Party Defendant/Counterclaimant
7 National Fire & Marine Insurance Company and against Third-Party Plaintiff/Counter-Defendant
8 Sharp Plumbing, Inc.” (ECF 226.) The Judgment provided no further details.

9 DISCUSSION

10 Federal Rule of Civil Procedure 60(a) provides that the Court “may correct a clerical
11 mistake or a mistake arising from oversight or omission whenever one is found in a judgment,
12 order, or other part of the record.” Rule 60(a) allows the Court to clarify “matters intended to be
13 implied or subsumed by the original judgment, rather than a change of course or a modification to
14 the intended legal effect of a judgment.” *Garamendi v. Henin*, 683 F.3d 1069, 1077 (9th Cir.
15 2012). “Rule 60(a) allows for clarification and explanation, consistent with the intent of the
16 original judgment, even in the absence of ambiguity, if necessary for enforcement.” *Id.* at 1079.

17 Here, the Court granted the First Motion which, among other things, sought summary
18 judgment on National Fire’s reimbursement cause of action and expressly requested
19 reimbursement in the amount of \$1,266,682.80. (ECF No. 183 at 3:3–6, 27:1–2.) Moreover, the
20 Court concluded that National Fire was entitled to summary judgment as to National Fire’s cause
21 of action for reimbursement, (Order at 18:4–5), and held that National Fire was entitled to an order
22 declaring that “Sharp must reimburse National Fire.” (Order at 15:1–3.) National Fire
23 respectfully submits that clarification of the Judgment to expressly reference the Court’s
24 reimbursement order is appropriate under *Garamendi* in order to “reflect the ‘necessary
25 implications’ of the original order, to ‘ensure that the court’s purpose is fully implemented,’ [and]
26 to ‘permit enforcement.’” *Garamendi*, 683 F.3d at 1079.

27 A proposed amended judgment is filed herewith.
28

CONCLUSION

For the foregoing reasons, National Fire respectfully requests that its Motion to Clarify Judgment be granted and that the proposed amended judgment attached hereto be entered by the Court.

DATED this 6th day of January, 2014

Respectfully submitted,

BAILEY ♦ KENNEDY

By: /s/ Sarah E. Harmon

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*Attorneys for Third-Party Defendant and
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Insurance Company*

IT IS SO ORDERED.



Gloria M. Navarro, Chief Judge
United States District Court

DATED: 01/29/14